

ST 96-29

Tax Type: SALES TAX

Issue: Machinery & Manufacturing Equipment Exemption (Agricultural)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	
v.)	Docket #
)	
TAXPAYER)	IBT #
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES

John L. Swartz, Springfield, for TAXPAYER

SYNOPSIS

This cause came on for hearing following a Retailers' Occupation and Use Tax audit performed upon TAXPAYER (hereinafter "taxpayer") by the Illinois Department of Revenue (hereinafter the "Department") for the period of January 1, 1988 through December 31, 1990. After completion of the audit work, the auditor reviewed the audit findings with a representative of the taxpayer who indicated his agreement with a portion of them. The tax on these items was paid at the close of the audit and are not subject to this hearing. Taxpayer disagreed with the auditor's intention to assess several other transactions and for these the Department subsequently issued an assessment whose timely protest by taxpayer resulted in this contested case.

One issue is the location of taxpayer's equipment sales. The taxpayer had listed Perry, Illinois, when filing his monthly sales tax returns, and the auditor determined the location should have been Griggsville. The effect of the equipment sales location is the rate of the applicable local Municipal

Retailers' Occupation Tax, as the municipality of Griggsville had reimposed its Municipal Retailers' Occupation Tax on sales of farm machinery and equipment while Perry had not. During pre-hearing proceedings the Department conceded the Municipal Retailers' Occupation Tax assessed for the period of January 1 through December 31, 1990 should be removed from the assessment.

Another issue is if certain cash sales made by taxpayer qualify for the farm machinery and equipment exemption. Related to this issue is the question if taxpayer has obtained and submitted sufficient documentation to establish the exemption for these parts and accessories.

After reviewing this matter, I recommend the issues be resolved partly in favor of the taxpayer and partly in favor of the Department.

FINDINGS OF FACT

1. Taxpayer conducted business operations in Illinois during the audit period by selling farm machinery and implements, lawn and garden equipment and related parts, accessories and service. (Tr. pp. 82-83; Dept. Ex. No. 2, p. 46)

2. Taxpayer's primary business product line was John Deere products. (Tr. pp. 82-83; Dept. Ex. No. 2, p. 46)

3. For many transactions in which taxpayer sold parts and accessories during the audit period, taxpayer did not state the name and address of the purchaser on the invoice. (Dept. Ex. No. 2, pp. 46, 51-56)

4. The taxpayer submitted documentary evidence showing that certain purchase orders for large machinery items such as tractors and corn heads were accepted in Griggsville, Illinois. (Taxpayer Ex. Nos. 1, 2 and 6)

5. Pursuant to statutory authority, the auditor did cause to be issued a Correction and/or Determination of Tax Due (SC-10) and this served as the basis for Notice of Tax Liability (NTL) No. 9114985401009 issued May 30, 1991 for \$50,108.00, inclusive of tax, penalty and interest. (Dept. Ex. Nos. 1 and 3)

6. The introduction of the Department's corrected return, adjusted tax liability summary schedule and NTL into evidence established its *prima facie* case. (Tr. p. 4; Dept. Ex. Nos. 1, 3 and 4)

CONCLUSIONS OF LAW

Retailers' Occupation Tax is imposed upon persons, such as taxpayer, engaged in the business of selling tangible personal property at retail, unless one can document an exemption, 35 ILCS 120/2 and 7. Section 120/2-5(2) of the Retailers' Occupation Tax Act excludes from taxation:

"Farm machinery and equipment both new and used . . . certified by the purchaser to be used primarily for production agriculture..."

Section 120/2-35 of the Act states further:

". . . For purposes of this Act, 'production agriculture' means the raising of or the propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food product, . . ."

The Department Regulation that administers the farm machinery and equipment exemption is 86 *Illinois Administrative Code*, Chapter I, Section 130.305. In order for the purchase of tangible personal property to be exempt from tax pursuant to this exemption, the foregoing statutory and regulatory language requires that certain conditions be met. One is that the tangible personal property must be used primarily for production agriculture. Another is that the purchaser of the item must execute and give the seller a written certification, 86 *Ill. Adm. Code*, ch. I, Sec. 130.305(m).

The certification required by Section 130.305(m) must be given by the purchaser to the seller and include the seller's name and address, the purchaser's name and address, and a statement that the property purchased will be used primarily in production agriculture. Retailers may accept blanket certificates but have the responsibility to obtain and must maintain the certificates as part of their books and records.

That was not the situation in the instant case for many transactions, notably the "cash sales" of parts and accessories. The taxpayer did not obtain or maintain certifications for these cash sales, in fact, taxpayer did not even list the purchaser's name and address on the invoice or purchase order. Mr. Bud Davidson, who identified himself as the parts manager for a competitor of taxpayer, was called by taxpayer to testify and Mr. Davidson acknowledged that he would not have engaged in taxpayer's practice of not charging tax on a cash invoice (Tr. pp. 23, 27), and that the purpose for having the farmer's name and address on the ticket and on a file card was having the purchaser take responsibility that the item would be used in production agriculture. (Tr. pp. 26-27)

Shortly before hearing, the taxpayer did contact customers and obtain certifications for many of the cash sales. The auditor reviewed these and allowed all transactions covered by a certification as non-taxable except for one, Invoice # 47216, dated 5/2/89, and the results of this revised tax liability calculation, which also includes the elimination of the 1990 Municipal Retailers' Occupation Tax, is contained in the adjusted schedules admitted into evidence as Dept. Exhibit No. 4.

Counsel for the taxpayer took issue with my ruling on his hearsay objection to certain testimony of the auditor regarding his decision on invoice # 47216, my ruling being based upon the provision in the Illinois Administrative Procedures Act (5 ILCS 100/10-40), that states that evidence not admissible under the rules of evidence followed in the circuit courts of Illinois may be admitted if reasonably reliable. I now find the dispute over this evidentiary matter to be moot because taxpayer did provide a properly executed certification for this invoice. Accordingly, the Department is bound to accept it under the regulation. I therefore recommend the tax attributable to this item be removed from the final assessment. This translates into a reduction of \$9.00 tax as this invoice amount (\$18.07) was included in the auditor's total \$5,697.10 tax base for exam type category 10-250, and after deleting this amount leaves a tax

base of \$5,679.03. Carrying this through the extrapolation process means a lower projected taxable base of \$45,432.00, which when multiplied by the total tax rate of .0625 yields \$2,840.00 tax for this category, which is \$9.00 less than the \$2,849.00 on revised audit schedule 1. (Dept. Ex. No. 4)

Regarding the sales taxpayer made of certain parts not allowed as exempt by the Department, taxpayer contends they are entitled to exemption because the only use for which the parts could be applied is by a farmer in production agriculture. This was the thrust of Mr. Davidson's testimony, and he referenced taxpayer Exhibit No. 5 which contains lists of transactions that taxpayer contends are separated into two categories, one being items that must be used in production agriculture and the other those that are not. I cannot agree with this contention of taxpayer because the identity or type of an item does not automatically qualify it for exemption. What is essential here, and what taxpayer lacks for certain transactions, is a properly executed exemption certificate as required by both statutory and regulatory provisions. The fact that an item is a tractor, for example, does not mean that it cannot be used in a non-agricultural manner such as by a private golf course, or a landscaping business operation. Mr. Davidson, whose testimony regarding the breakdown between the farm and nonfarm use of items in taxpayer Ex. No. 5 was premised upon his identifying the part via its John Deere part designation number, himself acknowledged that he could not be sure of the parts manufacturer designation number one hundred percent of the time. (Tr. p. 20)

Because taxpayer failed to submit the required certifications, I find it was proper for the Department to assess tax on the cash sales transactions, and I recommend the tax on them as reflected in Department Exhibit No. 4, subject to the one item discussed above, remain in the final assessment.

Another issue is the proper Municipal Retailers' Occupation Tax for the period of September 1988 through December 1989. The taxpayer filed its monthly sales tax returns as if its location for the purpose of accepting purchase orders for tractors, wagons, combines, corn heads, and other large equipment

items, (hereinafter "whole goods") was in Griggsville, meaning the Municipal ROT tax of Griggsville applied, because Department regulations stated the seller's acceptance of the purchase order was the most important factor in the occupation of selling. 86 Ill. Adm. Code, ch. I, Sec. 270.115 Because Griggsville, unlike Perry, had not reimposed the MROT on farm machinery, no MROT was filed by taxpayer. Relative to taxpayer's Griggsville "office", the auditor had determined that it was in taxpayer's home, that no employee was stationed there, and that no inventory was kept there. (Dept. Ex. No. 2, p. 46) Based upon these factors, the auditor questioned the accuracy of the taxpayer's actual "acceptance" of purchase orders in Griggsville and assessed the 1 % MROT for September 1988 through December 1989, the time taxpayer did not pay the 1% MROT on his whole goods sales.

The taxpayer and his bookkeeper offered testimony to the effect that WITNESS corporate president, approved and accepted purchase orders for whole goods at the office WITNESS maintained in Griggsville. Taxpayer testified he used a stamp to mark approval of purchase orders in Griggsville which was the only location where he kept said stamp, and that he had no copy of it elsewhere. (Tr. 100-101) The testimony of taxpayer's witnesses was corroborated by taxpayer Exhibit No. 6 that contains numerous purchase orders that are stamped "Approved At TAXPAYER Corporate Office Griggsville, IL." WITNESS testified he received purchase orders at the business's Griggsville post office box and took them to his home office for review and approval, and that he also did the same for some purchase orders he picked up from the Perry location. Taxpayer also introduced documentary evidence showing he filed a change of address form with the Department and also maintained a separate telephone line for the Griggsville office, which was listed in the telephone directory yellow pages. (Taxpayer Ex. Nos. 1 and 2)

Based upon this record, I am compelled to find in favor of taxpayer on this issue for the purchase orders he introduced that contain the Griggsville stamp of approval. Among the invoices in taxpayer Ex. No. 6 are some that do not

contain either the Griggsville approval stamp or WITNESS's signature. For example, purchase order # J56387 dated 9/25/89 for the sale of a corn head to XXXXX, Arenzville, is not stamped or signed by WITNESS, although it is signed by salesman "XXXXX" and the purchaser. Similarly, purchase order # H77322 dated 1/23/89 for the sale of a tandem axle sprayer with 45' boom to Curry Farms is not stamped nor signed by WITNESS. Also, purchase orders or invoices dated 3/2/89, 3/24/89, 3/15/89 and 5/26/89, among others, are not stamped. Based upon the fact that some documentary evidence does not coincide with the system described for approval of orders in Griggsville, I only accept as Griggsville transactions the purchase orders in taxpayer Ex. No. 6 that contain the Griggsville stamp of approval. The sales receipts for these total to \$1,121,900.00 and I recommend the 1 % tax attributable thereto be deleted from the final assessment. I recommend that the remaining local tax on the whole goods remain in the final assessment as taxpayer has failed to submit documentary evidence to show the exact location of acceptance for these sales contracts.

RECOMMENDATION

Based upon my findings and conclusions as stated above, I recommend the Department reduce NTL XXXXX and issue a final assessment.

Karl W. Betz, Administrative Law Judge